

PATENT



10-15-02

DAC #22

13017-3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re New Continued Prosecution Application of

Applicants : GOELET, Philip *et al.* )  
Application No.: 09/258,132 ) Office of the Deputy  
Filing Date : 26 February 1999 ) Commissioner for Patent  
Title: "Nucleic Acid Typing By ) Examination Policy  
Polymerase Extension of )  
Oligonucleotides Using )  
Terminator Mixtures" )

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**OFFICE OF PETITIONS**

Kalow & Springut LLP  
488 Madison Avenue, 19<sup>th</sup> Floor  
New York, New York 10022

11 October 2002

Commissioner for Patents

Box DAC

Washington, D.C. 20231

Adjustment date: 11/05/2002 AKELLEY  
10/16/2002 AWONDAF1 00000072 09258132  
01 FC:1460

**- PETITION UNDER 37 CFR 1.10(d) TO CORRECT**

**FILING DATE OF A NEW CPA APPLICATION**

Repln. Ref: 11/05/2002 AKELLEY 00101350L  
DAH:110171 Name/Number:09258132  
FC: 9204 \$130.00 CR

SIR or MADAM:

The attorneys for the applicants hereby petition the United States Patent and Trademark Office under 37 CFR 1.10(d) to correct an incorrect filing date accorded the new continued prosecution application ("CPA") identified above which was submitted to the Patent and Trademark Office by Express Mail. The undersigned attorney first became aware that the subject CPA application had been accorded an incorrect filing date of 7 August 2002 on 2 October 2002. The present petition is being submitted within ten days of first awareness of the error.

10/16/2002 AWONDAF1 00000072 09258132

01 FC:1460

130.00 UP

Notice Regarding Filing of Correspondence by  
"Express Mail" Pursuant to 37 CFR 1.10

"Express-Mail" mailing label number: EL 841563864 US.  
Date of Deposit: 11 October 2002

**EL841563864US**

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As demonstrated below corroborated by evidence from the United States Postal Service, the error in the filing date accorded the CPA application resulted from an error by a postal clerk of the Postal Service in entering the date on which the Express-Mail envelope containing the application papers was delivered to the Postal Service in the "date-in" box on the Express-Mail label of the envelope.

The facts on which the present petition is based are set out below.

The subject CPA application was based on United States patent application No. 09/258,132 with filing date 26 February 1999 ("the parent '132 application"). An appeal dated 3 January 2002 was lodged with respect to the parent '132 application. The final date for filing an appeal brief with an extension of time in the appeal of the parent application was 3 August 2002, which fell on a Saturday.

The attorneys for the applicants prepared application papers for filing a new CPA application based on the parent '132 application which were completed on Monday, 5 August 2002, the next business day following the final date of 3 August 2002. Specifically, a Continued Prosecution Application (CPA) Request Transmittal form [Form PTO/SB/29 (10-00)], a Preliminary Amendment, a Fee Transmittal for FY 2002 form [Form PTO/SB/17 (11-01)], and a Petition for Extension of Time under 37 CFR 1.136(a) form [Form PTO/SB/22 (10-00)] for a five-month extension of time to 3 August 2002 were prepared for submission to the Patent and Trademark Office. The application papers together with a receipt-acknowledgement postcard and a check for the filing fee and the extension of time were placed in an Express-Mail envelope to which was affixed the required postage of \$13.65 and an Express-Mail label addressed to the Commissioner for Patents, Box CPA, Washington, D.C. 20231. The Express Mail label bore label No. EV 035772795 US.

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The Express-Mail label number of the label on the envelope was entered on the first page of three of the application papers placed in the envelope: the Continued Prosecution Application Request Transmittal form, the Preliminary Amendment, and the Petition for Extension of Time form. Copies of the first pages of the three papers showing the Express-Mail label number are attached to the present petition as Exhibit A.

On information and belief, the Express-Mail envelope was delivered by hand to the Franklin D. Roosevelt Station of the United States Postal Service in New York, New York by an employee of the firm of the undersigned attorney on 5 August 2002. A postal clerk on duty at the station completed the Express-Mail label – incorrectly as to the “date-in” box, as demonstrated below – removed the “customer-copy” sheet of the label from the envelope, stamped the customer-copy sheet with a postmark stamp dated 5 August 2002, and gave the customer-copy sheet as a receipt to the employee who had hand delivered the envelope to the station. A true copy of the customer-copy sheet of the Express-Mail label is attached to the present petition as Exhibit B.

In completing the Express-Mail label, the postal clerk entered an incorrect date of 7 August 2002 in the “date-in” box on the label instead of the correct date of 5 August 2002. That some error was made by the postal clerk in processing the Express-Mail label is evident from the face of the label itself, in that the date in the “date-in” box, 7 August 2002, differs from the 5 August 2002 date of the postmark stamped on the customer-copy sheet of the label.

That the correct date of deposit of the envelope in question with the United States Postal Service was the postmark date of 5 August 2002 and not the date-in box entry of 7 August 2002 is evidenced by “track-and-confirm” information downloaded by the undersigned attorney on 2 October 2002 from the Internet Web site of the United States Postal Service for the Express-Mail parcel with mailing label EV 035792795 US. A copy of a printout of the track-and-confirm

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information from the United States Postal Service is attached to the petition as Exhibit C. As may be seen from Exhibit C, the track-and-confirm information indicates that the parcel was accepted by the Postal Service at 11:14 PM on 5 August 2002. It is submitted that the 5 August 2002 acceptance date of the track-and-confirm information from the United States Postal Service establishes that the parcel was deposited in the Express-Mail service of the Postal Service prior to the last scheduled pick-up for that day where the deposit was made.

The track-and-confirm information from the United States Postal Service of Exhibit C indicates further that the parcel with mailing label EV 035792795 US was received by and signed for on behalf of the United States Patent and Trademark Office at 12:02 PM on 7 August 2002. The track-and-confirm information thus indicates that the envelope was received by the Patent and Trademark Office in Arlington, Virginia on the same day, 7 August 2002, as the date indicated in the date-in box on the Express-Mail label of the envelope for delivery of the envelope to the Postal Service in New York, New York. Moreover, the time of receipt of the envelope by the Patent and Trademark Office indicated on the track-and-confirm information of Exhibit C occurred before the time entered in the time-in box on the Express-Mail label of Exhibit B for the date entered in the date-in box on the label, namely 11:14 PM (23:14) on 7 August 2002. It is, of course, impossible for the envelope to have been received by the Patent and Trademark Office from the Postal Service at a time on a given day before the time the envelope was delivered on that day to the Postal Service.

It is submitted that Exhibits B and C constitute evidence from the United States Postal Service which demonstrates that the date in the date-in box of the Express-Mail label number EV 035792795 US of Exhibit B was incorrect due to a Postal Service error and that the correct date of delivery of the envelope bearing the label to the Postal Service was 5 August 2002. It is submitted therefore that under 37 CFR 1.10(d) the filing date of the application should be corrected to 5 August 2002.

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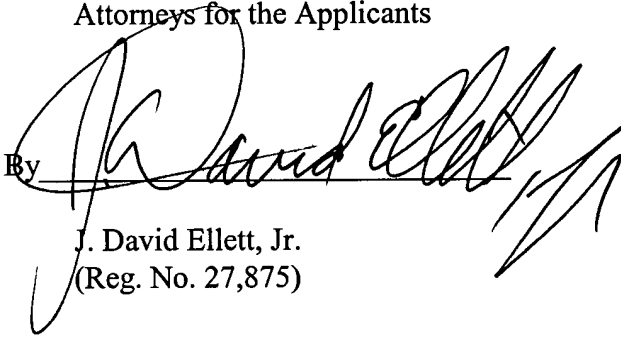
The fee for lodging the present petition under 37 CFR 1.10(d) is estimated to be one hundred thirty dollars (\$130). A check in the estimated amount for payment of the required fee is submitted herewith. Please charge any additional fee which may be required, or credit any overpayment, to deposit account No. 11-0171.

For the reasons set forth above, it is submitted that favorable action on the present petition and correction of filing date of the subject CPA application to 5 August 2002 is warranted. Such favorable action is respectfully requested.

Respectfully submitted,

Attorneys for the Applicants

By

  
J. David Ellett, Jr.  
(Reg. No. 27,875)

Telephone: (212) 813-1600



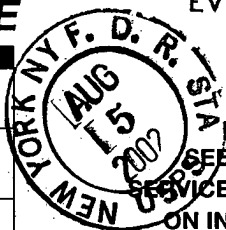
## POST OFFICE TO ADDRESSEE



EV 035772795 US

**ORIGIN (POSTAL USE ONLY)**

PO ZIP Code 10022	Day of Delivery <input type="checkbox"/> Next <input checked="" type="checkbox"/> Second	Flat Rate Envelope <input type="checkbox"/>
Date in Mo. 8 Day 7 Year 02	<input checked="" type="checkbox"/> 12 Noon <input type="checkbox"/> 3 PM	Postage \$ 13.65
Time in 2314 AM <input type="checkbox"/> PM <input type="checkbox"/>	Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	Return Receipt Fee
Weight lbs. 5 ozs.	Int'l Alpha Country Code	COD Fee Insurance Fee
No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Acceptance Clerk Initials JA	Total Postage & Fees \$ 13.65



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Customer Signature

**CUSTOMER USE ONLY****METHOD OF PAYMENT:**

Express Mail Corporate Acct. No.

Federal Agency Acct. No. or  
Postal Service Acct. No.**FROM: (PLEASE PRINT)**

PHONE 212, 313 1600

KALOW & SPRINGUT LLP  
488 MADISON AVE STE 1900  
NEW YORK NY 10022-5702

13017-3/OrcBio/1401 (JDE)

**TO: (PLEASE PRINT)**

PHONE ( )

Commissioner for Patents  
Box CPA  
Washington, D.C. 20231

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## Track & Confirm

### Shipment History

You entered EV03 5772 795U S

Your item was delivered at 12:02 pm on August 07, 2002 in WASHINGTON, DC 20231 to PATENT OFFICE 20231. The item was signed for by L KNIGHT.

Here is what happened earlier:

- ARRIVAL AT UNIT, August 07, 2002, 8:33 am, WASHINGTON, DC 20599
- ACCEPTANCE, August 05, 2002, 11:14 pm, NEW YORK, NY 10022

[Request Delivery Record >](#)



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